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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Martin J. Walsh,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

VH Harvesting, an Arizona LLC; T & K
Feeds, Inc., an Arizona corporation; Preston
Van Hofwegen, an individual.

Defendants.

Case No. 2:22-cv-01805-PHX-DJH

**Consent Judgment as to Defendants
VH Harvesting, LLC and Preston Van
Hofwegen**

1 Plaintiff Martin J. Walsh, Secretary of Labor, United States Department of Labor
 2 (the “Secretary”), and Defendants VH Harvesting, an Arizona LLC; Preston Van
 3 Hofwegen, an individual, (“VH Defendants” or Defendants); have agreed to resolve the
 4 matters in controversy in this civil action and consent to the entry of this Consent
 5 Judgment as follows:

6 **I. STATEMENT BY THE PARTIES**

7 A. The Secretary filed a complaint alleging Defendants violated the H-2A
 8 Program under Section 218 of the Immigration and Nationality Act (“INA”)¹ as amended
 9 by the Immigration and Reform Control Act of 1986 (“IRCA”) and their Regulations at
 10 20 C.F.R. Part 655 and 29 C.F.R. Part 501 (“H-2A Implementing Regulations”) (hereafter,
 11 “Complaint”). Defendants have appeared in this action.

12 B. Defendants have retained counsel and filed an answer.

13 C. Defendants agree that the Court has jurisdiction over the parties and the
 14 subject matter of this civil action, and that venue lies in the United States District Court
 15 of Arizona.

16 D. On October 20, 2022, Plaintiff applied for a Temporary Restraining Order
 17 (“TRO”) and Preliminary Injunction seeking to enjoin Defendants VH Harvesting, T & K
 18 Feeds, Inc., and Preston Van Hofwegen from violating their obligations under the H-2A
 19 program.

20 E. On October 25, 2022, the Secretary and T & K stipulated to the entry of a
 21 preliminary injunction against T & K (Doc. 14), which the Court granted (Doc. 17).

22 F. On October 27, 2022, the Court granted the Secretary’s Application for a
 23 TRO against VH Defendants (Doc. 18) and enjoined the VH Defendants from violating
 24 the H-2A regulations.

25 G. Defendants agree to resolve all allegations against them in the Complaint.

26 H. Defendants agree to the entry of this Consent Judgment without contest.

27
 28 ¹ All references made herein to the INA will be to its Section 218, 8 U.S.C. § 1188.

1 I. Defendants acknowledge that they and any individual, agent, or entity acting
2 on their behalf or at their direction have been given, and in the future will be given notice
3 of and an understanding of the provisions of this Consent Judgment.

4 J. Defendants violated their obligations under 20 C.F.R. § 655.122 in that
5 Defendants required the workers to perform work that was not authorized in the clearance
6 order that VH Harvesting, Inc. and Preston Van Hofwegen filed with the U.S. Department
7 of Labor.

8 K. VH Defendants violated their obligation under 20 C.F.R. § 655.122(h)(4)
9 and 20 C.F.R. § 655.135(e) to provide the workers with safe employer-provided
10 transportation.

11 L. VH Defendants violated their obligation under 8 U.S.C. § 1188(c)(4) and 20
12 C.F.R. § 655.122(d) to provide the workers with appropriate housing at no cost to the
13 workers.

14 M. VH Defendants violated their obligation under 20 C.F.R. § 655.122(g) to
15 provide the workers with three meals per day or access to kitchen facilities for a portion
16 of the employment period.

17 N. Defendants violated their obligation under 20 C.F.R. § 655.122(l) to pay the
18 workers the adverse effect wage rate. Defendants have paid workers rates between \$100-
19 \$150/day for some workdays lasting 14-16 hours, resulting in an hourly rate below that
20 required under the H-2A program.

21 O. VH Defendants violated their obligation under 20 C.F.R. § 501.4 to not
22 “intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate
23 against any person who has” sought protections under the H-2A program.

24 P. Collectively, the violations above affected over 17 workers.

25 Q. In consideration of this Consent Judgment and to resolve this case, and in
26 restitution and remediation, Defendants VH Harvesting, LLC and Preston Van Hofwegen
27 agree to pay \$281,683.08, which is comprised of \$181,683.08 in back wages and damages,
28 and \$100,000 in civil money penalties.

1 R. VH Defendants agree that any successors-in-interest to VH Harvesting,
2 LLC will be given a copy of this Consent Judgment

3 S. The parties agree that each party shall bear all fees, costs, and other expenses
4 incurred by such party in connection with any stage of this proceeding, including, but not
5 limited to, any costs referenced in the Equal Access to Justice Act.

6 T. Defendants VH Harvesting, LLC and Preston Van Hofwegen, and any VH
7 Harvesting, successors (i.e., any entity acquiring at least 20% of its assets) or any
8 individual, agent, or entity acting on its behalf or at its direction agree to be debarred under
9 29 C.F.R. § 501.20 from receiving future labor certifications for three years starting 30
10 days from the date the notice of debarment is used by the Wage and Hour Division.
11 Defendants, their successors or any individual, agent, or entity acting on their behalf or at
12 their direction agree and acknowledge in this Consent Judgment and that they are
13 voluntarily and knowingly waiving any right that they may have to request review or
14 otherwise contest this three-year debarment and the implementation thereof. Defendants
15 will not request review of or otherwise contest any debarment notice issued by the Wage
16 and Hour Division and will allow it to become a final order.

17 U. Defendants VH Harvesting, LLC and Preston Van Hofwegen agree that
18 they, their successors or any individual, agent, or entity acting on their behalf or at their
19 direction agree to be prohibited from applying for any future H-2A labor certifications
20 under 20 C.F.R. Part 655, Sub-Part B or contesting any denial of future H-2A applications
21 under 20 C.F.R. Part 655, Sub-Part B for three years from the date of this consent
22 judgment.

23 V. Defendants VH Harvesting, LLC and Preston Van Hofwegen, and any VH
24 Harvesting, successors (i.e., any entity acquiring at least 20% of its assets) or any
25 individual, agent, or entity acting on its behalf or at its direction agree to be debarred under
26 29 C.F.R. § 655.73 from receiving future labor certifications for three years starting 30
27 days from the date the notice of debarment is used by the Wage and Hour Division.
28 Defendants, their successors or any individual, agent, or entity acting on their behalf or at

1 their direction agree and acknowledge in this Consent Judgment and that they are
 2 voluntarily and knowingly waiving any right that they may have to request review or
 3 otherwise contest this three-year debarment and the implementation thereof. Defendants
 4 will not request review of or otherwise contest any debarment notice issued by the Wage
 5 and Hour Division and will allow it to become a final order.

6 W. Defendants VH Harvesting, LLC and Preston Van Hofwegen agree that
 7 they, their successors or any individual, agent, or entity acting on their behalf or at their
 8 direction shall be prohibited from applying for any future H-2 B labor certifications under
 9 20 C.F.R. Part 655, Sub-Part B or contesting any denial of future H-2B applications under
 10 20 C.F.R. Part 655, Sub-Part B for three years from the date of this consent judgment.

11 **II. PERMANENT INJUNCTION**

12 Therefore, upon motion of the attorneys for the Secretary, and for cause shown,
 13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that, pursuant to 8 U.S.C.
 14 § 1188(g)(2) and 29 C.F.R. §§ 501.16(b) & (c) that Defendants and their officers, agents,
 15 servants, employees, successors and all persons in active concert or participation with
 16 them are permanently enjoined and restrained from violating any provisions of the INA
 17 and the H-2A Implementing Regulations, with special emphasis in the manners identified
 18 below:

19 1. Defendants shall not, contrary to 20 C.F.R. § 655.122, require
 20 workers to perform work that was not authorized in a U.S. Department of Labor
 21 clearance order.

22 2. Defendants shall not, contrary to 20 C.F.R. § 655.122(h)(4) and 20
 23 C.F.R. § 655.135(e), fail to provide transportation that complies with all applicable
 24 federal, state or local laws and regulations.

25 3. Defendants shall not, contrary to 8 U.S.C. § 1188(c)(4) and 20 C.F.R.
 26 § 655.122(d), fail to provide housing that meets the applicable health and safety
 27 standards at no cost to H-2A workers.

28 4. Defendants shall not, contrary to 20 C.F.R. § 655.122(g), fail to

1 provide all H-2A workers with either meals or kitchen facilities.

2 5. Defendants shall not, contrary to 20 C.F.R § 655.122(l), fail to pay
3 the workers at least the adverse effect wage rate, the prevailing hourly wage rate,
4 the prevailing piece rate, the agreed-upon collective bargaining rate, or the Federal
5 or State minimum wage rate, in effect at the time work is performed, whichever is
6 highest, for every hour or portion thereof worked during a pay period.

7 6. Defendants shall not, contrary to 20 C.F.R § 501.4, “intimidate,
8 threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate
9 against any person who has” sought protections under the H-2A program.

10 **III. JUDGMENT AND ORDER**

11 **IT IS FURTHER ORDERED AND ADJUDGED** that:

12 **JUDGMENT IS HEREBY ENTERED**, in favor of the Secretary against
13 Defendants VH Harvesting, LLC and Preston Van Hofwegen in the amount of
14 \$281,683.08, which is comprised of \$181,683.08 in back wages and damages, and
15 \$100,000 in civil money penalties; and

16 1. VH Defendants shall satisfy the monetary terms of this judgment
17 upon their payment of \$259,271.08 to the Secretary, which represents the total
18 sum of the back wages and civil money penalties assessed and finally determined
19 or ordered by the Secretary for this matter pursuant to authority granted in 29
20 C.F.R. § 501.16(a)(1);

21 a. Defendants shall make all back wage payments required in this
22 Consent Judgment as follows:

23 i. On or before November 18, 2022, for workers number 1-8 on the
24 attached Exhibit A, by preparing a check or wire transfer in the amount
25 indicated next to the workers name payable to the worker and the
26 Department of Labor as the alternative payee. To fund these payments,
27 Defendants will receive \$22,411.08 from T & K Feeds, Inc. for back
28 wages it owes worker numbers 1-9.

1 ii. On or before November 18, 2022, make payments as indicated in
2 column "VH Payments 11/18/2022" on Exhibit A.

3 iii. On or before December 19, 2022, make payments in the
4 amounts indicated in column "VH Additional Payments Due by
5 12/19.2022" on attached Exhibit A. , VH shall make payments to the
6 workers via check or wire transfer, as instructed by the Secretary, or if
7 these methods are deemed not feasible by the Secretary by depositing the
8 funds with the Department of Labor, Wage and Hour Division online by
9 ACH transfer, credit card, debit card, or digital wallet by going to
10 <https://www.pay.gov/public/form/start/77761888>, or by going to
11 [www.pay.gov](https://www.pay.gov/public/form/start/77761888) and searching "WHD Back Wage Payment - WE Region".
12 All payments shall reference BW Case Number # 1972630.

13 b. All payments of Civil Money Penalties shall be made by using the
14 "WHD Civil Money Penalty Payment Form – Western Region" at
15 <https://www.pay.gov/public/form/start/77743734>. The payment shall reference
16 Case Number 1972630. VH Defendants shall make CMP payments as follows:
17 March 1, 2023 - \$25,000, June 1, 2023 -\$25,000, September 1, 2023 - \$25,000,
18 December 1, 2023 - \$25,000.

19 2. Any successors-in-interest to VH Harvesting, LLC shall be given a
20 copy of this Consent Judgment.

21 3. Defendants VH Harvesting, LLC and Preston Van Hofwegen, and
22 any VH Harvesting, successors (i.e., any entity acquiring at least 20% of its
23 assets) or any individual, agent, or entity acting on its behalf or at its direction
24 shall be debarred under 29 C.F.R. § 501.20 from receiving future labor
25 certifications for three years starting 30 days from the date the notice of
26 debarment is used by the Wage and Hour Division. Defendants, their successors
27 or any individual, agent, or entity acting on their behalf or at their direction agree
28 and acknowledge in this Consent Judgment and that they are voluntarily and

1 knowingly waiving any right that they may have to request review or otherwise
2 contest this three-year debarment and the implementation thereof. Defendants
3 will not request review of or otherwise contest any debarment notice issued by
4 the Wage and Hour Division and will allow it to become a final order.

5 4. Defendants VH Harvesting, LLC and Preston Van Hofwegen or
6 their successors or any individual, agent, or entity acting on their behalf or at their
7 direction shall be prohibited from applying for any future H-2A labor
8 certifications under 20 C.F.R. Part 655, Sub-Part B or contesting any denial of
9 future H-2A applications under 20 C.F.R. Part 655, Sub-Part B for three years
10 from the date of this consent judgment.

11 5. Defendants VH Harvesting, LLC and Preston Van Hofwegen, and
12 any VH Harvesting, successors (i.e., any entity acquiring at least 20% of its
13 assets) or any individual, agent, or entity acting on its behalf or at its direction
14 shall be debarred under 29 C.F.R. § 655.73 from receiving future labor
15 certifications for three years starting 30 days from the date the notice of
16 debarment issued by the Wage and Hour Division. Defendants, their successors
17 or any individual, agent, or entity acting on their behalf or at their direction agree
18 and acknowledge in this Consent Judgment and that they are voluntarily and
19 knowingly waiving any right that they may have to request review or otherwise
20 contest this three-year debarment and the implementation thereof. Defendants
21 will not request review of or otherwise contest any debarment notice issued by
22 the Wage and Hour Division and will allow it to become a final order.

23 6. Defendants VH Harvesting, LLC and Preston Van Hofwegen, their
24 successors or any individual, agent, or entity acting on their behalf or at their
25 direction shall be prohibited from applying for any future H-2 B labor
26 certifications under 20 C.F.R. Part 655, Sub-Part B or contesting any denial of
27 future H-2B applications under 20 C.F.R. Part 655, Sub-Part B for three years
28 from the date of this consent judgment.

7. Each party shall bear all fees, costs, and other expenses incurred by such party in connection with any stage of this proceeding, including, but not limited to, any costs referenced in the Equal Access to Justice Act; and

8. This Court shall retain jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment.

IT IS SO ORDERED.

Dated:

HONORABLE DIANE J. HUMETEWA
UNITED STATES DISTRICT JUDGE

1 For the Plaintiff:

2 MARC A. PILOTIN
3 Regional Solicitor

4 BORIS ORLOV
Counsel for Wage and Hour

5 VICTORIA YEE
6 Trial Attorney

7
8 s/ Charles Song
9 CHARLES SONG
Senior Trial Attorney

DATE: 11/18/2022

10 *Attorneys for Plaintiff*
11 *Secretary of Labor*
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28 For Defendants:

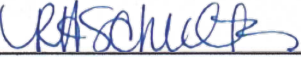
1 The Defendants consent to the entry of this Judgment and waive notice by the Clerk of
2 the Court.

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5 VH Harvesting, LLC:
6 By: Preston Van Hofwegen
7 Title: Owner

DATE: 11/18/2022

8 
9 Preston Van Hofwegen, Individually

DATE: 11/18/2022

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13 
14 Rebecca Hause-Schultz, Esq.
15 Lori Aysegul Guner, Esq.
16 Fisher & Phillips LLP
17 Attorneys for VH Harvesting, LLC
18 & Preston Van Hofwegen

DATE: 11/18/2022

Exhibit A

	First Name	Last Name	Start Period	End Period	Back Wages VH	Back Wages T & K	Total Back Wages Due VH and T & K	T & K Payments 11/18/2022	VH Payments 11/18/2022	Total Payments 11/18/2022	VH Additional Payments Due by 12/19/2022
1	Jose Alfredo	Vargas Magana	3/4/2022	12/1/2022	\$5,256.00	\$4,694.93	\$9,950.93	\$4,694.93		\$4,694.93	\$5,256.00
2	Gerardo Jaco	Zepeda Zepeda	3/4/2022	12/1/2022	\$9,722.24	\$4,634.35	\$14,356.59	\$4,634.35		\$4,634.35	\$9,722.24
3	Jose Domingo	Ponce Topete	3/4/2022	12/1/2022	\$18,572.08	\$405.90	\$18,977.98	\$405.90	\$ 2,765.11	\$3,171.01	\$15,806.97
4	Juan Manuel	Padilla Olivera	3/4/2022	12/1/2022	\$15,429.84	\$1,613.89	\$17,043.73	\$1,613.89	\$ 1,557.11	\$3,171.00	\$13,872.73
5	Juan Diego	Ramirez Penaloz	3/4/2022	12/1/2022	\$16,404.59	\$327.12	\$16,731.71	\$327.12	\$ 2,843.88	\$3,171.00	\$13,560.71
6	Juan Uvaldo	Lopez Landin	3/4/2022	12/1/2022	\$21,091.64	\$337.12	\$21,428.76	\$337.12	\$ 2,833.88	\$3,171.00	\$18,257.76
7	Miguel Geran	Cortes Fregozo	3/4/2022	12/1/2022	\$6,843.08	\$3,991.33	\$10,834.41	\$3,991.33	\$ 6,843.08	\$10,834.41	\$0.00
8	Antonio	Irai Chavez Galve	3/4/2022	12/1/2022	\$9,918.16	\$4,159.29	\$14,077.45	\$4,159.29		\$4,159.29	\$9,918.16
9	Alan Arturo	Bueno Cardenas	3/4/2022	8/14/2022	\$5,658.64	\$2,247.15	\$7,905.79	\$2,247.15 to VH			\$7,905.79
10	Armando	Barriga Gonzalez	6/1/2022	8/4/2022	\$3,374.82		\$3,374.82				\$3,374.82
11	Carlos	Salas Remis	3/4/2022	5/18/2022	\$3,038.96		\$3,038.96				\$3,038.96
12	Dora	Galvez Alcaraz	3/4/2022	10/16/2022	\$7,681.20		\$7,681.20				\$7,681.20
13	Jairo Ivan	Barriga Rivera	6/1/2022	8/4/2022	\$4,129.74		\$4,129.74				\$4,129.74
14	Jesus	Ronquillo Salas	3/4/2022	5/18/2022	\$4,282.91		\$4,282.91				\$4,282.91
15	Jose Trinidad	Velasco Villa	3/4/2022	12/1/2022	\$20,226.47		\$20,226.47				\$20,226.47
16	Mario	Alvarado Navarr	3/4/2022	4/16/2022	\$3,820.32		\$3,820.32				\$3,820.32
17	Williams	Contreras Lopez	3/4/2022	4/16/2022	\$3,820.32		\$3,820.32				\$3,820.32
TOTAL					\$159,271.01	\$22,411.08	\$181,682.09	\$22,411.08	\$16,843.06	\$37,006.99	\$144,675.10